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By Electronic Delivery Through the FHFA Website

Mr. Clinton Jones
General Counsel, Federal Housing Finance Agency
Constitution Center, Eighth Floor (OGC)
400 7th Street SW
Washington, DC 20219

Re: Notice of Proposed Rulemaking on Resolution Planning Comments/RIN 2590-AB13

Dear Mr. Jones:

Attached are the comments of Freddie Mac on the proposed Resolution Planning rulemaking published by the Federal Housing Finance Agency in the Federal Register on January 8, 2021.

Freddie Mac appreciates the opportunity to provide our views on the proposed rule. Please feel free to contact me if you have questions or require any further information.

Sincerely,

Ricardo Anzaldua
Executive Vice President and General Counsel

Attachment

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I. Introduction

We submit this letter to offer our comments on the proposed Resolution Planning rule (the "Proposed Rule") issued by the Federal Housing Finance Agency ("FHFA"). The Proposed Rule would require Freddie Mac and Fannie Mae (the "Enterprises") to develop and submit resolution plans biennially to facilitate an Enterprise's rapid and orderly resolution in the event the Director appoints FHFA as receiver.[1]

Freddie Mac supports FHFA's development of a resolution planning framework as an important part of its ongoing effort to develop a robust prudential regulatory framework for the Enterprises. Such a framework will be particularly critical to FHFA's supervision of the Enterprises after they exit conservatorship.

Resolution planning for the Enterprises is also important to facilitate the continuation of Enterprise functions that are essential to maintaining stability in the housing market in the event that an Enterprise were to become troubled and potentially enter receivership. We also endorse FHFA's goal that resolution planning be an iterative process that should evolve over time and involve ongoing dialogue between FHFA and an Enterprise. Otherwise, as FHFA noted in the Proposed Rule, there could be potentially significant impacts on the national housing finance markets, financial stability, and the broader economy.

In this letter we have highlighted some specific areas where FHFA could further develop the resolution planning framework, including in its resolution planning regulation. In addition, we offer some suggested modifications to the framework included in the Proposed Rule. We recognize that significant parts of the framework will develop over time through additional guidance and experience as the Enterprises develop credible resolution plans in collaboration with FHFA. We support FHFA's approach, and our suggestions are intended to improve the effectiveness of FHFA's resolution planning process.

II. Unique Structure and Role of the Enterprises in U.S. Housing Markets

It is important that FHFA's resolution requirements be tailored to the unique structure, role, and responsibilities of the Enterprises and prioritize minimizing the disruption in the national housing finance markets by providing for the continued operation of an Enterprise's core business lines.

We support the steps that FHFA has taken to tailor the Proposed Rule to the Enterprises' structure and business model, such as by removing material entity and critical operation designations. However, as discussed below in our comments on the Proposed Rule and recommendations regarding the most important topics for additional clarity, we suggest that FHFA further clarify and tailor expectations for the Enterprises' resolution plans to make them more effective in meeting FHFA's specified purposes. The Proposed Rule imports most of the resolution plan requirements from the federal banking agencies' resolution planning rules for banks and bank holding companies, even though the Enterprises are fundamentally different from these entities. We believe that FHFA's resolution plan requirements and any future guidance should reflect these important differences.

[1] *See* Resolution Planning, 86 Fed. Reg. 1,326 (proposed Jan. 8, 2021).

Although the Enterprises are comparable in size to the largest banking organizations, we are less complex than banking organizations. The Enterprises are monoline entities, without holding companies or subsidiaries, that operate only in the United States. Freddie Mac's balance sheet is simple and limited in the types of activities we conduct. Mortgage loans represent roughly 90 percent of the assets on our balance sheet. On the liabilities side, virtually all of our debt is comprised of debt securities of consolidated trusts holding mortgage loans.[2]

Furthermore, an effective resolution process for the Enterprises should take into account our unique statutory mission. While banking organizations and financial companies play important roles in our financial system, banks face rapidly evolving choices in their business mix and strategy, including whether to expand into (or withdraw from) particular businesses and geographies. In contrast, the Enterprises are grounded in (and limited by) their core responsibilities related to their statutory mission of providing liquidity, stability, and affordability to the U.S. housing market. Whether faced with an economic downturn or a global pandemic, we perform our countercyclical role of supporting markets and borrowers. We do not, and cannot, tighten our belts and brace for turbulence as sharply as private firms can. Instead, we provide ongoing assistance to the secondary markets throughout the nation, consistent with our statutory purpose, when times are good and bad.[3] By congressional design, Freddie Mac must continue to provide liquidity that supports lending to borrowers in difficult economic times or risk disrupting housing and finance markets.

Given the Enterprises' statutory mission, it would be helpful for FHFA to clarify how it will weigh potentially competing priorities when determining resolution mechanics and evaluating whether an Enterprise's resolution plan is "credible"[4] under the Proposed Rule. As discussed below, among other things, a credible plan is defined to require that the plan plausibly achieve the specified purposes of the Proposed Rule.[5] Specifically, it would be helpful for FHFA to provide clarity on how the Enterprises, in developing a credible resolution plan, should prioritize considerations that could be in tension with each other, such as:

- preserving the value of the Enterprise and its assets *vs.* minimizing disruption to the housing market and ensuring the continuation of Freddie Mac's statutory mission; and
- ensuring that a significant portion of the Enterprise's balance sheet would be

[2] *See* Freddie Mac, Annual Report (Form 10-K) (Feb. 10, 2020).

[3] As an illustrative example of our contrast with private firms, our charter mandates that we engage in "activities relating to mortgages on housing for low- and moderate-income families involving a reasonable economic return that may be less than the return earned on other activities[.]" Federal Home Loan Mortgage Corporation Act, § 301(b)(3), 12 U.S.C. § 1451 note.

[4] *See* Proposed Rule, 12 C.F.R. § 1242.4(a) (requiring each Enterprise "to submit a credible resolution plan to FHFA").

[5] *See* Proposed Rule, 12 C.F.R. § 1242.2 (definition of "credible"). The purposes that a credible resolution plan must plausibly achieve are: (1) "minimiz[ing] disruption in the national housing finance markets by providing for the continued operation of the core business lines of an Enterprise in receivership by a newly constituted [LLRE]; (2) preserv[ing] the value of an Enterprise's franchise and assets; (3) facilitat[ing] the division of assets and liabilities between the [LLRE] and the receivership estate; (4) ensur[ing] that investors in mortgage-backed securities guaranteed by the Enterprises and in Enterprise unsecured debt bear losses in accordance with the priority of payments established in the Safety and Soundness Act while minimizing unnecessary losses and costs to these investors; and (5) foster[ing] market discipline by making clear that no extraordinary government support will be available to indemnify investors against losses or fund the resolution of an Enterprise." Proposed Rule, 12 C.F.R. § 1242.1(a).

transferred to the limited-life regulated entity ("LLRE") in order for the LLRE to continue the market role and to fulfill the mission of an Enterprise *vs.* ensuring that the balance sheet transferred to the LLRE is based on the amount of capital available or obtainable in the LLRE to support such business lines (which could imply a more limited balance sheet going forward in the LLRE).[6]

Additional clarity on these points is important because for Freddie Mac to develop a credible and effective resolution strategy, we need to understand the ultimate goal of a receivership.

III. Importance of Specifying Regulatory Expectations and Priorities

We strongly support FHFA's goal of establishing a "multi-faceted, iterative Enterprise resolution planning process."[7] FHFA has also recognized that the Enterprises' resolution plans will be developed "in coordination with and pursuant to guidance from FHFA," which we strongly support.[8] Creating and clarifying regulatory expectations and priorities in the context of the Enterprises will be important because the Proposed Rule, similar to the federal banking agencies' resolution planning rules, establishes a high-level structure for resolution planning requirements.

As the federal banking agencies did in developing a resolution regime for banking organizations, we would urge FHFA to make sure that the resolution planning framework for the Enterprises engages the public and encourages creativity and problem-solving. The federal banking agencies shared their thinking and experience through a variety of mechanisms, including participating in national and international conferences and symposia, publishing research, and offering testimony.[9] We encourage FHFA to promote similar dialogue with stakeholders to stimulate research, analysis, and solutions in order both to develop a strong, credible resolution planning process and to provide transparency to the public, allowing them to understand the content of public resolution plans and the agencies' credibility determinations.[10]

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[6] The resolution process requires additional choices that require weighing the present and hypothetical future capital and debt options available to the current Freddie Mac entity and a potential LLRE derived from our current operations. For example, if we assume that certain debt obligations will not be transferred to the LLRE, it will be challenging for the LLRE to raise similar types of debt from the same market of potential debt holders at a price point that enables the LLRE to reasonably raise debt and return to functions after the LLRE stage of resolution.

[7] *See* Proposed Rule, 86 Fed. Reg. at 1,329-30.

[8] *See* FHFA, 2021 Scorecard for Fannie Mae, Freddie Mac, and Common Securitization Solutions, p. 5 (Feb. 16, 2021).

[9] *See, e.g.*, Federal Reserve, Study on the Resolution of Financial Companies under the Bankruptcy Code (July 2011); Statement of Sheila Bair before the House Subcommittee on Financial Institutions and Consumer Credit, *Examining and Evaluating the Role of the Regulator during the Financial Crisis and Today* (May 26, 2011); Federal Reserve Bank of Cleveland, *Resolving Insolvent Large and Complex Financial Institutions* (Conference, Apr. 2011); Board of Governors of the Federal Reserve System ("Federal Reserve") and Federal Deposit Insurance Corporation ("FDIC"), Symposium on Building the Financial System of the 21st Century: An Agenda for Europe and the United States (Mar. 18, 2010); Ben Bernanke, Remarks on The Squam Lake Report: Fixing the Financial System (June 16, 2010).

[10] FHFA could base such dialogue and opportunities for feedback on existing outreach efforts, such as its Duty to Serve listening sessions, where the Enterprises and market participants discuss and provide feedback on how the Enterprises can best facilitate a secondary market for mortgages on housing in underserved markets. Freddie Mac would willingly participate in such sessions on resolution planning.

The Enterprises will also need to make sure they have a common understanding with FHFA regarding priorities in order to develop credible resolution strategies and to build on such strategies over the iterative resolution planning process. The federal banking agencies have established a path to develop more granular expectations for resolution plans through the issuance of guidance,[11] FAQs, discussions with the affected institutions, and public and confidential firm-specific guidance and feedback after each resolution plan submission.[12] Guidance from the federal banking agencies has covered a wide array of topics and has provided a roadmap to the priorities that banking organizations should focus on in a resolution plan submission.

We expect that engagement with the public, national events, policy decisions, and the resolution process will influence FHFA's priorities, and we look forward to working with FHFA to identify and align these topics so that the Enterprises share priorities in developing their plans. We also encourage FHFA to provide guidance and firm-specific feedback to the Enterprises and to work closely with the Enterprises as we develop our resolution plans and as FHFA hones its expectations for the plans. This approach would give FHFA the opportunity to understand, and the flexibility to accommodate, the complexities and practical obstacles that will inevitably arise while developing effective resolution plans for the Enterprises.

IV. **Key Topics for Additional Clarity**

a. *Resolution Plan "Credibility"*

The Proposed Rule would require each submitted plan to be "credible,"[13] which would be evaluated by FHFA for consistency with three criteria. A credible plan: (1) demonstrates consideration of required and prohibited assumptions set by the Proposed Rule; (2) provides required strategic analysis and detailed information required by the Proposed Rule that is "well-founded," based on information that is observable or otherwise verifiable, and employs reasonable projections of current and historical conditions; and (3) plausibly achieves the specified purposes of the Proposed Rule.[14]

FHFA's assessment of whether Freddie Mac's plan is credible hinges on the plan's ability to plausibly assist FHFA in planning for the resolution of Freddie Mac under FHFA's receivership authority in a manner that, in FHFA's view, achieves certain goals, including "minimiz[ing] disruption in the national housing finance markets by providing for the continued operation of the core business lines of an Enterprise in receivership by a newly constituted

[11] *See, e.g.*, Federal Reserve and FDIC, Guidance for 2013 §165(d) Annual Resolution Plan Submissions by Domestic Covered Companies that Submitted Initial Resolution Plans in 2012 (Oct. 1, 2013); Federal Reserve and FDIC, Guidance for 2017 §165(d) Annual Resolution Plan Submissions by Domestic Covered Companies that Submitted Initial Resolution Plans in July 2015 (Apr. 4, 2016); Final Guidance for the 2019, 84 Fed. Reg. 1,438 (Feb. 4, 2019); FDIC, Guidance for Covered Insured Depository Institution Resolution Plan Submissions (Dec. 17, 2014). The federal banking agencies also issue guidance specific to foreign banking organizations.

[12] Individual feedback letters are available at https://www.federalreserve.gov/supervisionreg/agency-feedback-letters-index.htm.

[13] *See* Proposed Rule, 12 C.F.R. § 1242.4(a) (requiring each Enterprise "to submit a credible resolution plan to FHFA").

[14] *See* Proposed Rule, 12 C.F.R. § 1242.2 (definition of "credible").

[LLRE]" and "foster[ing] market discipline[.]"[15]

The Proposed Rule's criteria for determining whether an Enterprise's resolution plan is "credible" are different than the equivalent criteria both in the insured depository institution and banking organization contexts. In both banking contexts, the requirements for evaluating whether a resolution plan is credible are less directly tied to specific and potentially differing policy goals. The FDIC's rules state that a resolution plan is "credible" if "its strategies for resolving the [covered insured depository institution ("CIDI")], and the detailed information required by [the rules], are well-founded and based on information and data related to the CIDI that are observable or otherwise verifiable and employ reasonable projections from current and historical conditions within the broader financial markets."[16] Similarly, the regulations implementing Section 165(d) of the Dodd-Frank Act, applicable to banking organizations, requires that a resolution plan facilitate a "rapid and orderly resolution" of an institution.[17] A "rapidly and orderly resolution" is evaluated by whether the reorganization or liquidation of the institution under the Bankruptcy Code can be accomplished "within a reasonable period of time and in a manner that substantially mitigates the risk that the failure of the [institution] would have serious adverse effects on financial stability in the United States."[18] Both of these definitions are closer to FHFA's first and second more objective criteria, rather than its third criterion, which looks to broader FHFA policy goals.

Because the third criterion is inherently subjective, it would be helpful in the Enterprises' development of their resolution plans for FHFA to provide additional guidance that prioritizes these criteria for assessing a plan's plausible achievement of the five purposes of the Proposed Rule. Articulating FHFA's expectations would enhance an Enterprise's ability to effectively plan for resolution and provide transparency to the market to understand the results of FHFA's future credibility determinations.

Specifically, FHFA should clarify the manner in which it will weigh the criteria and each of the underlying purposes in order to determine whether a resolution plan is credible. This is particularly important because objectively meeting each of these purposes may involve trade-offs for the Enterprises as discussed above in Section II. Consequently, we urge FHFA to consider that there may be different reasonable strategies for each Enterprise's resolution plan that should be explored to provide optionality to FHFA in any receivership scenario versus one best strategy for both of the Enterprises. In determining whether Freddie Mac's resolution plan plausibly achieves the specified purposes of the Proposed Rule, or some weighted balance of the specified purposes, FHFA should evaluate whether Freddie Mac has demonstrated that one strategy achieves such purposes *better* than the other reasonable strategies analyzed by Freddie Mac. Such an approach would be consistent with the evaluation of resolution plans for insured depository institutions, under which the insured depository institution must propose reasonable resolution options and demonstrate how one is the least costly relative to the cost of liquidation or other resolution methods.[19]

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[15] *See* Proposed Rule, 86 Fed. Reg. at 1,326.

[16] *See* 12 C.F.R. § 360.10(c)(4).

[17] *See* 12 C.F.R. § 243.5(b).

[18] *See* 12 C.F.R. § 243.2 (definition of "rapid and orderly resolution").

[19] *See* 12 C.F.R. § 360.10(c)(2)(vii).

b. *Definition and Continuity of Core Business Lines in the LLRE*

The Proposed Rule establishes a process by which the Enterprises must identify, and FHFA must review and determine, core business lines.[20] A "core business line" is defined as "a business line of the Enterprise that plausibly would continue to operate in a[n LLRE], considering the purposes, mission, and authorized activities of the Enterprise as set forth in its authorizing statute and the Safety and Soundness Act. Core business lines includes associated operations, services, functions, and supports necessary for any identified core business line to be continued, such as servicing, credit enhancement, securitization support, information technology support and operations, and human resources and personnel."[21]

This definition of "core business line" in the Proposed Rule encompasses two concepts that are present in the federal banking agencies' resolution planning rules: (1) core business lines; and (2) critical services. "Core business lines" are defined as "those business lines of the covered company, including associated operations, services, functions and support, that, in the view of the covered company, upon failure would result in a material loss of revenue, profit, or franchise value."[22] "Critical services" are defined in the FDIC's resolution planning rule as "services and operations of the [insured depository institution], such as servicing, information technology support and operations, human resource and personnel that are necessary to continue the day-to-day operations of the [insured depository institution]."[23] We encourage FHFA to bifurcate the definition of a "core business line" between core business lines and critical services. Separating these concepts will allow the Enterprises to more clearly map core business lines and critical services to the relevant entities and to show what core business lines rely on each of the critical services. Additionally, this separation will allow the Enterprises to better understand the goals of the receivership with respect to the operations of an Enterprise versus financial resources.

As an initial matter, we agree that the single-family business line and multifamily business line are appropriately identified as core business lines under the Proposed Rule.[24] However, we want to be thoughtful about our identification of core business lines, and consistent with the Proposed Rule, Freddie Mac intends to develop a methodology rooted in the key resolution objectives to identify our core business lines, as well as the scope of activities that should be included in each core business line. We believe continued discussion with FHFA will be essential as Freddie Mac moves forward with its processes to identify core business lines and the scope of activities.

c. *Clarification of Resolution and Receivership Mechanics*

Establishing a preferred resolution strategy or strategies to guide FHFA's actions in resolution and receivership would provide clarity to the Enterprises, the market, and the public.

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[20] *See* Proposed Rule, 12 C.F.R. § 1242.3.

[21] *See* Proposed Rule, 12 C.F.R. § 1242.2 (definition of "core business line").

[22] 12 C.F.R. § 243.2 (definition of "core business lines").

[23] 12 C.F.R. § 360.10(b)(5).

[24] *See* Proposed Rule, 86 Fed. Reg. at 1,331.

Given the policy goals central to FHFA's proposed credibility criteria described above, an articulated preferred resolution strategy could identify and prioritize these criteria through a clear illustration of a start-to-finish resolution that achieves these goals.[25] Minimizing market disruptions related to an Enterprise receivership, among other goals, will require that market participants have an understanding in advance of the ways the receivership may operate, as well as a high level of certainty that current Enterprise guarantees will be honored. To the extent that the LLRE resulting from an Enterprise receivership is expected to have an ongoing role in purchasing and securitizing mortgages, it would help market participants to understand the strategies available to fund and support the LLRE's activities.

Given the well-established pattern of FDIC receivership resolutions, banks drafting insured depository institution resolution plans had a relatively clear sense of the assumptions and strategies involved in developing their plans.[26] In contrast, while Section 1145 of the Housing and Economic Recovery Act of 2008[27] establishes a broad framework for FHFA to implement and administer a receivership, it does not provide clear details of a receivership restructuring or the steps to be taken in an Enterprise resolution, and an Enterprise resolution utilizing an LLRE is untested.[28] Without additional details concerning FHFA's preferred approach to implement a resolution, it will be challenging for the Enterprises to develop their resolution plans, since the Enterprises consequently would have to make fundamental assumptions about how FHFA would exercise its considerable discretion on a range of matters. We encourage FHFA to work with the Enterprises through FHFA's feedback and dialogue during the resolution plan cycles to ensure the Enterprises understand FHFA's preferred receivership strategy.

Furthermore, given the potential for significant market disruption in connection with the receivership of an Enterprise, public disclosure of FHFA's preferred resolution strategy for an Enterprise would be helpful in setting expectations and reducing market disruption both upon FHFA's resolution plan credibility determinations and any actual utilization of an LLRE receivership. Specifically, it would be helpful to Freddie Mac and the public for FHFA to confirm the following mechanics: (1) the LLRE will be created at the outset of the receivership process; (2) the LLRE will be permitted to raise capital and debt financing; and (3) FHFA will proactively assist in identifying business areas that can be sold to an acquirer.

In support of these goals, the final rule could also provide additional clarity to shape planning and market expectations for an LLRE's balance sheet and operations. Due to the unique nature of the Enterprises' missions, business, and organizational structure, as discussed in Part II above, it will be important to have robust and ongoing dialogue between FHFA and the Enterprises to ensure that a resolution plan meets the balance sheet and operational expectations of FHFA and the public. To that end, we look forward to dialogue with FHFA regarding these

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[25] The public development of a preferred resolution strategy in dialogue between regulators, academics, and stakeholders has had positive results. For example, certain U.S. and international regulators have provided details on their resolution strategies in order to foster a greater understanding of the process. *See, e.g.*, FDIC, Resolution of Systemically Important Financial Institutions: The Single Point of Entry Strategy, 78 Fed. Reg. 76,614 (Dec. 18, 2013); Bank of England, *The Bank of England's approach to resolution* (Oct. 2017).

[26] *See* FDIC, Resolutions Handbook, available at https://www.fdic.gov/bank/historical/reshandbook/.

[27] *See* Pub. L. No. 110-289, § 1145, 122 Stat. 2,654, 2,734 (2008).

[28] Although FHFA issued a final rule in 2011 to establish a framework for conservatorship and receivership operations for the Enterprises, this rule provides very few additional details of the steps to be taken in an Enterprise resolution. *See* Conservatorship and Receivership, 76 Fed. Reg. 35,724 (June 20, 2011).

balance sheet and operational expectations, including regarding loss-absorbing capacity. These discussions will enable FHFA and Freddie Mac to focus their efforts and resources appropriately in developing a credible, effective resolution plan.

d. *Use of Current State to Develop Strategic Analysis*

In order for the resolution plan to be most useful, we believe it should reflect as closely as possible an Enterprise's actual assets and obligations at the time the plan is drafted. By reflecting an Enterprise's current state in conservatorship, the strategic analysis, including any related impediments, will be useful in the event the plan must be deployed. Consequently, we understand that an Enterprise should not assume in its initial resolution plan a future state in which it is fully capitalized and released from conservatorship. As the Enterprises approach an exit from conservatorship, the analyses in their resolution plans should reflect these changes. We believe FHFA should clarify in the final rule that the Enterprises should adopt this approach.

e. *Resolution Plan Template*

The Proposed Rule specifies general categories of information to be included in a resolution plan, as well a division of a plan into public and confidential sections.[29] Although the Proposed Rule provides some level of detail concerning the content and organization of a plan, we recommend that FHFA subsequently provide a template for completing a resolution plan in accordance with the regulatory requirements. As FHFA stated in the Proposed Rule, we understand that the resolution planning process will be iterative, and therefore, a template may be developed after the submission of the initial plan and further dialogue between FHFA and the Enterprises.

A template would allow the Enterprises to more clearly understand plan requirements and would facilitate FHFA's review of submitted plans. In addition, a template would minimize differences in the Enterprises' plans attributable to choices related to style and presentation.

A template is particularly appropriate for Enterprise resolution plans because the Enterprises have relatively simple businesses that are quite similar. FHFA could use the template to detail the organization and content of plans tailored to the Enterprises' businesses. Notably, in 2014, the Federal Reserve and FDIC adopted a model template for certain banking organizations.[30] We encourage FHFA to develop and introduce a similar template to improve the efficiency of Enterprise drafting, FHFA's review, and public understanding of resolution plan filings.

V. PSPA Support

The Proposed Rule specifies that an Enterprise's resolution plan "[n]ot assume the provision or continuation of extraordinary support by the United States to the Enterprise to prevent either its becoming in danger of default or in default."[31] This required assumption expressly indicates that an Enterprise should not consider support provided by the Enterprise's

[29] *See* Proposed Rule, 12 C.F.R. §§ 1242.5, 1242.6.

[30] *See* Press Release, Federal Reserve and FDIC, Agencies Provide Additional Guidance for Certain Resolution Plans (Aug. 15, 2014).

[31] *See* Proposed Rule, 12 C.F.R. § 1242.5(b)(2).

Senior Preferred Stock Purchase Agreement ("PSPA") with the U.S. Department of the Treasury ("Treasury").[32] FHFA notes that the required assumption of no extraordinary government support exists to "clarify the status of the Enterprises as privately owned corporations."[33]

Freddie Mac appreciates the policy position leading to a required assumption of no extraordinary government support and recognizes that a plausible resolution plan should not be based on an expectation that such support would be extended to new obligations. Although the assumption of no PSPA support in the future would be challenging, the more important issue is to ensure clarity with respect to obligations that exist at the time the resolution process is triggered. In our view, the distinction between support that might be provided and support that is already secured is important to clarify. The PSPAs are contractual agreements between the Enterprises and Treasury that have been in place since 2008. Treasury has an obligation to provide funds under the PSPAs upon a request by FHFA on behalf of an Enterprise, and the PSPAs expressly provide rights to holders of existing Enterprise debt securities and mortgage guarantee obligations to seek judicial relief in connection with a failure to draw on the commitment or Treasury's failure to perform its obligations.

Our concern with an assumption that PSPA funding is not available is that the existence or non-existence of such support is fundamental to the design of a resolution plan. Major components of the strategic analysis describing the Enterprise's plan for rapid and orderly resolution would be affected by whether or not PSPA support for existing obligations is considered. As long as such PSPA support continues to be available, a plan that assumes the opposite will be less useful in guiding the actual resolution of an Enterprise. We therefore encourage FHFA to clarify that the PSPA support of the Enterprise's existing obligations continues to apply for purposes of developing a resolution strategy.

A credible resolution plan should reflect an Enterprise's actual assets and obligations as closely as possible, including its contractual rights to secure funding from any source, both private and public. If PSPA support for existing obligations were no longer available to an Enterprise in the future, or after filing an initial plan, the Proposed Rule includes a provision that requires the Enterprise to provide FHFA with a notice of an "extraordinary event," [34] which would presumably apply. Under such circumstance, FHFA could require the Enterprise to provide an "interim update" [35] to its existing resolution plan, reflecting the significant change in resources available to the Enterprise in connection with its plan. Having the resolution plan reflect the Enterprise's condition at the time the plan is written would enable the Enterprises to develop more effective resolution plans that are more closely tied to the actual conditions that would be present at the time of a filing as discussed above in Section IV.d.

VI. Resolution Planning Cycles

The Proposed Rule would require each Enterprise to submit an initial resolution plan 18 months after the deadline for submitting its initial notice preliminarily identifying core

[32] *Id.*

[33] *See* Proposed Rule, 86 Fed. Reg. at 1,330.

[34] *See* Proposed Rule, 12 C.F.R. §1242.4(b).

[35] *See* Proposed Rule, 12 C.F.R. §1242.4(a)(3); *see also* Proposed Rule, 86 Fed. Reg. at 1,340.

business lines (which notice is required three months after the effective date of the final rule).[36] Thereafter, the Proposed Rule would require the Enterprises to submit resolution plans once every two years.[37] In order to meet FHFA's expectations within this timeframe, the provision of guidance will be essential, as discussed above.

We note that under the Proposed Rule, FHFA has the ability to alter and extend the submission date of a resolution plan.[38] We believe that FHFA's flexibility to extend the submission date will play an important role in the iterative process of developing the Enterprises' resolution plans and the resolution planning process more generally. The federal banking agencies have similar discretion under their resolution planning rules, which they have utilized multiple times over the years.[39] However, in order to enhance the predictability of resolution plan submission dates, provide appropriate time for resolution plan preparation, and help facilitate covered companies' resource allocation decisions, the federal banking agencies must provide notice of such a change no later than 12 months' before the date on which the resolution plan is now due.[40] For these same reasons, we support FHFA clarifying that it will provide a comparable 12-month prior notice to the Enterprises of a change in the submission date of a plan.

In the future, as the Enterprises work with FHFA to develop robust and credible resolution plans and establish resolution planning experience, we hope we can work with FHFA to reduce the frequency of the submission of full plans that will remain responsive to the purpose of resolution plans and FHFA's goals. Over time, FHFA should also consider allowing for targeted plans to increase efficiency. The federal banking agencies recently have moved in this direction with respect to all banking organizations, and their actions could provide a helpful path for future development.[41]

Presently, FHFA could consider increasing efficiency by allowing the Enterprises to incorporate by reference information that is otherwise available to FHFA through existing supervisory mechanisms. For example, the Enterprises should be allowed to incorporate by reference reports provided to FHFA that speak to the issues included in the requirements for the

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[36] *See* Proposed Rule, 12 C.F.R. §§ 1242.4(a)(1), 1242.3(a)(5).

[37] *See* Proposed Rule, 12 C.F.R. § 1242.4(a)(1).

[38] *See* Proposed Rule, 12 C.F.R. § 1242.4(a)(2).

[39] *See* 12 C.F.R. § 243.4(d)(2).

[40] *See* Resolution Plans Required, 84 Fed. Reg. 59,194, 59,203 (Nov. 1, 2019).

[41] Pursuant to amendments made to the resolution planning rule in 2019, banking organizations are permitted to submit targeted plans on an alternating schedule with full plans or only reduced plans following the filing of a full plan. A "targeted resolution plan" generally requires information with respect to capital, liquidity, and the covered company's plan for executing any recapitalization contemplated in its resolution plan, material changes, responses to firm-specific feedback and general guidance, a public section, and responses to specifically identified information that the federal banking agencies have targeted. *See* 12 C.F.R. § 243.6. A "reduced resolution plan" incorporates an initial full plan by reference and requires information only with respect to material changes and changes to the plan as a result of changes in law or specific feedback. *See* 12 C.F.R. § 243.7.

In making these changes, the federal banking agencies sought "to strike the appropriate balance between providing a means for the agencies to continue receiving updated information on . . . changes that may impact a firm's resolution strategy while not requiring submission of information that remains largely unchanged since the previous submission." *See supra* note 40 at 59,207. While we recognize that the Proposed Rule contemplates incorporation of previous plan information by reference, subject to certain restrictions, this practice would not improve the efficiency and effectiveness of resolution planning by as much as would be the case if only targeted or reduced plans were required.

resolution plan, such as the Enterprise Regulatory Capital Framework reports. Such an approach would be consistent with the direction recently taken by the federal banking agencies. In response to comments from foreign banking organizations, the federal banking agencies eliminated certain expectations from their resolution planning guidance for information that was obtainable via other means.[42] We encourage FHFA to adopt this approach to avoid imposing unnecessarily duplicative requirements.

VII. **Waiver Process**

We encourage FHFA to include a waiver process in its resolution planning rule. The federal banking agencies' resolution planning rules contain a waiver process that allows the agencies to waive one or more of the resolution plan requirements for any number of resolution plan submissions.[43] All but the largest and most complex banking organizations may request a waiver of a resolution plan requirement.[44] Although the Enterprises are large, they are far simpler in structure and organization than all but the smallest banking organizations.

The federal banking agencies have recognized that some resolution planning processes and content requirements may be unnecessary in situations where providing such information would "be of limited utility to the agencies, such as when the agencies have recently completed an in-depth review of a particular business line and are satisfied that they are in possession of current information relevant to a firm's ability to resolve that business line."[45] Additionally, the federal banking agencies have noted that such a waiver may be appropriate when certain aspects of an entity's resolution plan reach a "steady state" or become less material such that regular updates would not be as useful in the review of the entity's resolution plan.[46]

For the same reasons as those articulated by the federal banking agencies, FHFA should also include a waiver process in the final rule. Such a process would allow FHFA to accomplish its goals of obtaining current and relevant resolution plans, while relieving some of the burdens that would face both FHFA, in its review, and the Enterprises, in their preparations, if the plans were required to include potentially duplicative or immaterial information that would not affect FHFA's review.

VIII. **Further Tailoring of the Proposed Rule**

As discussed above, the Enterprises have a unique structure, role, and responsibilities. While we support FHFA's tailoring of the Proposed Rule to the Enterprises' structure and business model, we encourage FHFA to further tailor the Proposed Rule to remove requirements where the burden outweighs the usefulness in developing a credible resolution plan in the context of the Enterprises.

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[42] *See* Guidance for Resolution Plan Submissions of Certain Foreign-Based Covered Companies, 85 Fed. Reg. 83,557, 83,562, 83,564-55, 83,567 (Dec. 22, 2020).

[43] *See* 12 C.F.R. § 243.4(d)(6).

[44] *Id.*

[45] *See* Resolution Plans Required, 84 Fed. Reg. 21,600, 21,608 (proposed May 14, 2019).

[46] *See supra* note 40 at 59,206.

Section 1242.5(f)(1) requires an Enterprise's resolution plan to provide a detailed description of the Enterprise's organizational structure, including information with respect to each affiliate and trust such as the percentage of voting and nonvoting equity and licensing and key management. This is in contrast to the federal banking regulators' rules, which generally require such information only with respect to material entities.[47] Common Securitization Solutions is Freddie Mac's only affiliate, and our trusts are generally mortgage backed securities issuers, where governance of the trusts is unlikely to be an important consideration in resolution. Therefore, we recommend that FHFA add a materiality qualifier, limiting the organizational structure requirements to "material affiliates and trusts."

Similarly, Sections 1242.5(f)(11) and (14) require identification of third-party providers, as well as a description of the Enterprise's business connections, dependencies, and relationships with such third parties and an analysis of the impact of such third parties' failures on the Enterprise. The federal banking regulators also require identification of counterparties, as well as a description of the interconnections, interdependencies, and relationships with such third parties and an analysis of the impact of such third parties' failures. However, this requirement is limited to "major counterparties."[48] We encourage FHFA to follow a similar approach and require identification of "material" third-party providers and analysis of only a "material" adverse impact on the Enterprise of the failure of any such third party.

In each of these instances, a materiality qualifier will reduce the burden on the Enterprises by relieving them of the requirement to collect information that is not particularly relevant or helpful to FHFA in the rapid and orderly resolution of an Enterprise. It will also ensure that FHFA is not inundated with such irrelevant information.

If additional items are identified after completion of the initial resolution plan that are of limited usefulness to FHFA in connection with preparing for a potential receivership of an Enterprise, FHFA could use the waiver provision suggested above to provide further tailoring.

IX. Timing of FHFA Feedback and Guidance

The Proposed Rule provides that, after accepting a complete plan from an Enterprise, FHFA has one year to notify the Enterprise of any deficiencies, planned actions, or other feedback.[49] Under the proposed two-year plan submission cycle, this timing results in FHFA and the Enterprise evenly dividing the available time, with FHFA taking half to provide feedback, and the Enterprise taking the other half to respond.

We recommend, under whatever submission cycle FHFA adopts, that it provide the Enterprises with more than half of the total plan cycle time to respond. We note that the Enterprises may require more time to draft, review, and finalize their initial submissions due to the newness of this process and the novel questions raised by applying the federal and international banking resolution planning requirements to the Enterprises. In comparison, however, FHFA's review of the two Enterprises' plans is likely to be more straightforward than

[47] *See* 12 C.F.R. §243.2 (definition of "material entity").

[48] *See* 12 C.F.R. § 243.5(e)(10)-(11).

[49] *See* Proposed Rule, 12 C.F.R. § 1242.7(b)(iii).

that of the federal banking agencies' review of dozens of resolution plans submitted by banking organizations that are relatively more complex and less stable. FHFA will review only two plans, which are likely to be similar given that the Enterprises have the same basic businesses, a contrast with the broader variety of substance in the plans submitted by banking organizations to the federal banking agencies. Similarly, we recommend that FHFA provide a specific time period for an Enterprise to respond to any request for an interim update (*e.g.*, six months) to provide the Enterprise sufficient time to prepare a thoughtful and thorough response.

We also encourage FHFA to commit to providing any feedback or guidance with respect to the Enterprises' resolution plans at least 12 months prior to the filing date of the next plan. Under the Proposed Rule, FHFA commits to providing feedback on the Enterprises' resolution plans within 12 months, although FHFA may extend this timeframe.[50] FHFA indicates in the preamble that this timing would provide a year before the next filing of a resolution plan, since plans are filed every two years.[51] However, given the ability of FHFA to extend its deadline for providing feedback and to change the resolution plan filing dates for the Enterprises, an Enterprise may, in actuality, have less than a year to reflect FHFA's guidance and feedback in its next plan. We understand the importance of FHFA maintaining flexibility on these matters, so we recommend that FHFA align its approach with that adopted by the federal banking agencies and commit to providing guidance and feedback at least 12 months prior to the filing date of the next plan.[52]

X. Notice and Comment Process

Beginning in 2018, the federal banking agencies have subjected resolution planning guidance to a public notice-and-comment period prior to publication.[53] The federal banking agencies have committed to make all general guidance available for public comment, but continue to provide firm-specific feedback without notice and comment.[54] We encourage FHFA to consider a similar process—with public notice and comment on proposed formal guidance in order to engage the public and obtain input from interested stakeholders and to promote transparency in the resolution planning process. Transparency in the development of resolution planning requirements and expectations will generate greater confidence in the process among market participants and public stakeholders and will inform the market's reaction to FHFA's credibility determinations.

XI. Total Loss-Absorbing Capacity and Long-Term Debt

In the Proposed Rule, FHFA notes that it "is considering a separate rulemaking that would require each Enterprise to maintain minimum amounts of long-term debt [("LTD")] and other loss-absorbing capacity requirements."[55] Certain systemically important U.S. banking

[50] *See* Proposed Rule, 86 Fed. Reg. at 1,339.

[51] *Id*.

[52] *See supra* note 40 at 59,204.

[53] *See* Resolution Planning Guidance for Eight Large, Complex U.S. Banking Organizations, 83 Fed. Reg. 32,856 (July 16, 2018); Final Guidance for the 2019, 84 Fed. Reg. 1,438 (Feb. 4, 2019).

[54] *See supra* note 40 at 59.204.

[55] Proposed Rule at 1,329.

organizations ("Covered Banking Organizations")[56] are subject to LTD and total loss-absorbing capacity ("TLAC") requirements, which require their holding companies to issue significant amounts of external long-term debt having specific terms.[57] Unlike existing equity, LTD can be "bailed-in" to create additional equity capital subsequent to a Covered Banking Organization's failure. Additionally, Covered Banking Organizations are subject to "clean holding company" requirements that impose stringent limitations on their ability to incur certain types of non-TLAC-related liabilities ("Clean Holdco Requirements").[58]

In the case of the Enterprises, a TLAC and/or LTD requirement could have significant impacts on the market and the ability of the Enterprises to meet their statutory obligations to provide liquidity, stability, and affordability to the U.S. housing market. This is because there is an added cost to issuing instruments that meet TLAC and LTD requirements, and such expenses may ultimately be passed on to borrowers.[59] In addition, FHFA should carefully consider any potential TLAC or LTD requirements' interaction with other newly imposed requirements on the Enterprises. Specifically, FHFA's recently finalized capital requirements would require Freddie Mac to raise approximately $112 billion of qualifying capital either through retained earnings or market issuances.[60] Issuing additional instruments to meet TLAC and LTD requirements at the same time could be extremely challenging and potentially delay Freddie Mac's ability to achieve full capitalization.

Consequently, if FHFA contemplates implementing LTD, TLAC, or Clean Holdco Requirements, FHFA should issue such a proposal for public notice and comment. Any proposal should include an analysis of the economic impact on borrowers, debt markets, and the U.S. housing markets and economy, consistent with 5 U.S.C. § 603(c) and recent federal agency practice.[61]

If FHFA imposes LTD and TLAC requirements, it should allow the Enterprises to issue the instruments to fulfill such requirements out of the Enterprises' current operating company and not impose Clean Holdco Requirements. Unlike the Covered Banking Organizations that have diversified, international operations organized under a holding company structure, the Enterprises are monoline operating companies with no subsidiaries or holding companies and operate solely in the United States. Given these unique features of the Enterprises, and the

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[56] *See* 12 C.F.R. 252.60. Requirements for internal or external TLAC also apply to the U.S. intermediate holding companies of certain systemically important foreign banking organizations; however, we focus on requirements applicable to U.S. banking organizations in this comment. *See* 12 C.F.R. 252.160.

[57] *See* [TLAC], [LTD], and Clean Holding Company Requirements for Systemically Important U.S. Bank Holding Companies and Intermediate Holding Companies of Systemically Important Foreign Banking Organizations, 82 Fed. Reg. 8,266 (Jan. 24, 2017).

[58] *Id*.

[59] *See, e.g.*, Bank for International Settlements, *Assessing the economic costs and benefits of TLAC implementation* (Nov. 2015) (estimating a "corresponding drag on annual [gross domestic product] in the range of 1.9 and 5.3 [basis points]"). The Federal Reserve also estimated that the LTD costs on banking organizations would impose an increased lending rate of 1.3 to 6.3 basis points, which would add between $4.2 billion and $20.2 billion to accumulated bank lending costs in the United States per year. *See supra* note 57 at 8,286.

[60] *See* Enterprise Regulatory Capital Framework, 85 Fed. Reg. 82,150 (Dec. 17, 2020).

[61] *See supra* note 57.

Enterprises' unique statutory mission, we urge FHFA to avoid requiring costly and burdensome restructuring that may accompany the imposition of such requirements without commensurate benefit for resolvability.

XII. Conclusion

In conclusion, we support the goals of FHFA's proposed resolution planning rule, and we agree that having an effective and efficient resolution planning regime will assist in the Enterprises' exit from conservatorship and fulfilment of their mission. We also support the general approach of taking elements of the federal banking agencies' approach to resolution planning and tailoring them to the business mix and structure of the Enterprises. The federal banking agencies' experience in the development of resolution planning regulations and guidance provides a useful opportunity to draw from lessons learned over time. FHFA can draw from those experiences to tailor resolution planning requirements by taking into consideration important differences between the Enterprises and large banking organizations in their complexity, strategy, structure, and geographic reach. Our comments are designed to improve the effectiveness and efficiency of the proposed rule.

We appreciate the opportunity to provide these comments and would be pleased to respond to questions or to provide additional information.